HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

Chapter VIII, Rule 32(2) (b)

Description of the case

W.P. No. 804 of 2003 (S/S)

Jasram Joshi

Vs

Director Bal Vikas Pariyojana Uttaranchal and another.

Approved for reporting

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~~Not Approved for Reporting~~

Date of decision: 06.6.2005.

Initials of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 804 of 2003 (SS)

Jasram Joshi ..... Petitioners

Versus

1. Director, Baal Vikas Pariyojana, Uttaranchal
2. District Programme Officer, Dehradun..... Respondents

Sri Sharad Sharma, Advocate for the petitioner
Sri Harendra Belwal, Brief Holder for the State.

Dated: 6th June 2005

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 5.7.2003 passed by the respondent no.1 and for a writ of mandamus commanding the respondents to consider the petitioner for promotion to a class III post.

Briefly stated, the petitioner was appointed on Class IV post by District Programme Officer, Rampur on 26.10.1990 and since then the petitioner has been discharging his duties as an class IV employee. The petitioner has submitted that his is intermediate passed and having vast experience of typing, accounts and office routine works, therefore, he was discharging the work of a class III employee in the office of the respondents. He also filed certificates issued by his officers in this connection. Some persons filed false and fabricated

complaints against the petitioner and he was suspended on 25.2.2003 by the respondent no.1. While the petitioner was under suspension he was frequently transferred and he was not able to participate in the enquiry contemplated in pursuance to the order of suspension. The petitioner alleged that the enquiry officer conducted ex parte enquiry and no opportunity was given to him to cross-examine the witnesses and to place his defence. Finally the respondent no. 1 vide order dated 5.7.2003 permanently withheld two annual increments of the petitioner. The petitioner has submitted that no show cause notice was issued to him by the disciplinary authority before passing any punishment order. The petitioner has submitted that the enquiry held and the order of punishment passed by the authority concerned is derogatory to the principles of natural justice.

Respondents contested the petition and have filed counter affidavit. The respondents have alleged that several complaints were received by the department against the petitioner regarding his misconduct of taking unauthorized gratification from Aganwari Workers and Aganwari Helpers for their appointments and after receiving the complaints the Director, Women Empowerment & Child Development Department, Dehradun vide order dated 25.2.2003 suspended the petitioner and Integrated Child Development Scheme Officer (Directorate) was appointed as Enquiry Officer in the Departmental Enquiry against the petitioner. The respondents have filed copies of such complaints as annexure Nos. C.A. 1 to annexure C.A. 6. The respondents have also asserted in their counter affidavit that charge sheet was given to the petitioner after the report of the

enquiry officer by taking lenient view against the petitioner minor punishment was awarded to him.

Heard the learned counsel for the parties at length.

The learned counsel for the petitioner has submitted that order of punishment was passed against the petitioner by the authority, which is higher to the appointing authority of the petitioner, and as such the petitioner was prevented from his right of appeal. He also submitted that proper procedure has not been adopted for holding inquiry against the petitioner and there is no evidence against the petitioner to hold him guilty of misconduct. No copies of the material documents were provided to the petitioner along with the charge sheet nor any description of the evidence likely to be used against the petitioner was made

I have considered the respective arguments of the parties in the light of the Rules framed by the Government for initiating disciplinary inquiry, the right conferred under Article 311 (2) of the Constitution of India and the law relating to natural justice.

In the present case it has to be determined as to whether the charged employee knew the accusation against him and whether he had been given an opportunity to state his case and whether the authority concerned had acted in good faith.

In paragraph (III) of the Counter affidavit the respondents have mentioned regarding the complaints against the petitioner on the basis of which disciplinary proceedings were initiated against him. Paragraph III of the Counter affidavit is quoted as under:

"That several complaints were received by the department against the petitioner regarding his misconduct of taking unauthorized gratification from Aganwari Workers

and Aganwari Helpers for their appointments and after receiving these complaints the Director, Women Empowerment & Child Development Department, Dehradun vide its order No. 1151-57/L.C.D.S./Stha-4/2002-2003 dated 25.02.2003 suspended the petitioner and Integrated Child Development Scheme Officer (Directorate) was appointed as Enquiry Officer in the Departmental Enquiry against the petitioner. In this connection, true copies of the complaints received from various Aganwari Workers & Aganwari Helpers and copy of the suspension order of the petitioner dated 25.2.2003 are being filed herewith and marked as Annexure Nos. C.A.1, C.A.2, C.A.3, C.A.4, C.A.5, & C.A.6 respectively to this counter affidavit."

A perusal of C.A. 1 to C.A. 6 shows that annexure C.A.1 is undated and addresses of the complaints have not been mentioned. C.A. 2 is dated 5.4.2003, C.A. 3 is undated and particulars of complainant have also not mentioned, C.A. 4 is dated 4.4.2003. Thus all the alleged complaints are after the date of suspension order of the petitioner i.e. 25.2.2000 and they cannot form the basis of charges framed against the petitioner. There is nothing on record that there was prima facie evidence against the petitioner to initiate disciplinary proceedings against him.

Section 7 of U.P. Government Servant (Discipline and Appeal) Rules 1999 provides for the procedure for imposing penalties. Sub section (ii) of Section 7 provides that the facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge sheet. The charge sheet shall be approved by the Disciplinary Authority. Sub Section (v) further provides that

the charge sheet along with the cop0y of documentary evidence mentioned therein and list of the witnesses and their statements, if any shall be served on the charged Government servant personally or by registered post at the address mentioned in the official records.

Report of the Enquiry Officer (C.A.-8) does not indicate that the petitioner was given opportunity to cross-examine the witnesses and to produce evidence in defence. Second show cause notice was not issued to him along with the copy of enquiry report.

The Apex Court in the case Union of India vs. Mohd. Ramzan Khan, AIR 1991 SC 471 observed that disciplinary proceedings are quasi-judicial and it attracts the principle of natural justice. The Apex Court has held as under:

"Several pronouncements of this Court dealing with Article 311(2) of the Constitution have laid down the test of natural justice in the matter of meeting the charges. This Court on one occasion has stated that two phases of the inquiry contemplated under Article 311(2) prior to the Forty-second Amendment were judicial. That perhaps was a little stretching the position. Even if it does not become a judicial proceeding, there can be no dispute that it is a quasi-judicial one. There is a charge and a denial followed by an inquiry at which evidence is led and assessment of the material before conclusion is reached. These facets do make the matter quasi-judicial and attract the principles of natural justice. As this Court rightly pointed out in the Gujarat case (AIR 1969 SC 1294), the disciplinary authority is very often influenced by the conclusions of the Inquiry Officer and even by the recommendations relating to the nature of punishment to be

inflicted. With the Forty-second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the submissions made on the basis of the material to assist the Inquiry Officer to come to his conclusions. In case his conclusions are kept away from the delinquent officer and the Inquiry Officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment so far as the delinquent is concerned. In a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected. Prof. Wade has pointed out:

> *"The concept of natural justice has existed for many centuries and it has crystallized into two rules: that no man should be judge in his own cause; and that no man should suffer without first being given a fair hearing….. They (the courts) have been developing and extending the principles of natural justice so as to build up a kind of code of fair administrative procedure, to be obeyed by authorities of all kinds. They have done this once again, by assuming that Parliament always intends powers to be exercised fairly."*

This Court in Mazharul Islam Hashmi v. State of U.P.11 pointed out:

"Every person must know what he is to meet and he must have opportunity of meeting that case. The legislature, however, can exclude operation of these principles expressly or implicitly. But in the absence of any such exclusion, the principle of natural justice will have to be proved."

In the present case the rules framed under U.P. Government Servant (Discipline and Appeal) Rules, 1999 and the procedure provides thereunder, have not been followed by the Enquiry Officer and Disciplinary Authority. Non- supply of the copies of material documents had caused serious prejudice to him in making a proper representation. The principles of natural justice as enunciated in the judgments of Apex court have not been followed by the respondents' authorities, while conducting inquiry proceedings against the delinquent employee. The order dated 5.7.2003 passed by the respondent no.1 is not in consonance with the rights conferred under Article 311 (2) of the Constitution of India and, therefore, it cannot be sustained.

So far as the second prayer of the petitioner for promotion to class III post is concerned, this Court vide order dated 11.8.2003 directed the respondents to consider the claim of the petitioner for promotion and will follow the procedure of sealed cover as enunciated by the Apex Court in the case of Union of India vs. K.V. Janaki Raman, AIR 1991 SC 2010. The petitioner filed copies of certificates issued by various officers of the respondent department (annexure 2A to 2E) wherein it has been mentioned that the petitioner was performing duty of typing, accounts and other routine works of the office. The contents of these certificates have not been denied by the

respondents, which shows that the petitioner is a competent and eligible employee for promotion in class III post.

In view of the above, the order dated 5.7.2003 passed by the respondent no.1 is hereby quashed. The respondents are directed to consider the promotion the petitioner on class III post, if he was found eligible in the procedure of sealed cover and fix his seniority according to rules.

Accordingly, the writ petition is allowed. There will be no order as to costs.

(Rajesh Tandon, J.)

6.6.2005
*Dhyani